

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RAVI WHITWORTH, et al.,
Plaintiffs,
v.
SOLARCITY CORP., et al.,
Defendants.

Case No. 16-cv-01540-JSC

PRETRIAL ORDER

Following the Further Case Management Conference held on December 16, 2021, IT IS
ORDERED THAT:

I. CASE MANAGEMENT SCHEDULE

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| Expert Disclosure Deadline: | July 10, 2022 |
| Rebuttal Expert Disclosure Deadline: | August 8, 2022 |
| Close of Fact and Expert Discovery: | September 16, 2022 |
| Deadline for Filing Dispositive Motions: | October 13, 2022 |
| Deadline for Filing Oppositions to Dispositive Motions: | November 17, 2022 |
| Deadline for Filing Replies to Dispositive Motions: | December 15, 2022 |
| Hearing Date for Dispositive Motions: | January 19, 2023 |

By January 14, 2022, the parties shall file a stipulation indicating their mediator and the date for their mediation in April or May 2022.

The Court sets a further video Case Management Conference for July 14, 2022 at 1:30 p.m.
An updated Joint Case Management Conference Statement is due July 7, 2022.

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II. TRIAL DATE

A. A bench trial shall begin on **March 13, 2023, at 8:30 a.m.**, in Courtroom E, 15th Floor, U.S. District Court, 450 Golden Gate Avenue, San Francisco, California.

B. The Court expects the length of the trial will not exceed 5 days.

III. PRETRIAL CONFERENCE

A Final Pretrial Conference shall be held on **February 23, 2023, at 2:00 p.m.**, in Courtroom E, 15th Floor, Federal Building, 450 Golden Gate Avenue, San Francisco. Lead trial counsel shall attend the Conference.

IV. TRIAL PROCEDURES

A. Counsel shall *not* prepare a Joint Pretrial Conference Statement. Instead, twenty (20) calendar days in advance of the Final Pretrial Conference, please do the following:

1. In lieu of preparing a Joint Pretrial Conference Statement, the parties shall meet and confer telephonically or in person to prepare and file a jointly signed, Proposed Final Pretrial Order that contains: (a) a brief description of the substance of claims and defenses which remain to be decided; (b) a statement of all relief sought; (c) all stipulated facts; (d) a list of all factual issues that remain to be tried and organized by counts; (e) a joint exhibit list in numerical order, including a brief description of the exhibit and Bates numbers, a blank column for when it will be offered into evidence, a blank column for when it may be received into evidence, and a blank column for any limitations on its use; and (f) each party's separate witness list for its case-in-chief witnesses (including those appearing by deposition) providing, for all such witnesses other than an individual plaintiff and an individual defendant, a short statement of the substance of his/her testimony and, separately, what, if any, non-cumulative testimony the witness will offer. If non-cumulative testimony is not spelled out, the Court will presume the witness is cumulative. For each witness, state an hour/minute time estimate for the direct examination (only). Items (e) and (f) should be appendices to the proposed order. The objective is to convert the

proposed order to a final order with the benefit of any discussion at the Final Pretrial Conference.

2. File each side's proposed Findings of Fact and Conclusions of Law;
3. File each side's Trial Brief;
4. Serve Motions in Limine. At least twenty (20) calendar days before the pretrial conference, the moving party shall serve, but not file, motions in limine. At least ten (10) calendar days before the conference, the responding party shall serve the opposition. There will be no reply. When the oppositions are received, the moving party should collate the motion and the opposition, together, back-to-back, and then file the paired sets at least seven (7) calendar days before the conference. Each motion should be presented in a separate memorandum and properly identified, for example, "Plaintiff's Motion in Limine No. 1 to Exclude" Each party is limited to bringing five motions in limine. The parties are encouraged to stipulate where possible, for example, as to the exclusion of witnesses from the courtroom. Each motion should address a single, separate topic, and contain no more than seven pages of briefing per side.

B. Not less than seven (7) days before the Pretrial Conference, counsel and/or the parties shall file and serve any objections to exhibits. Exhibits and witnesses not included in the proposed Joint Pretrial Order pursuant to Paragraph IV.A.1. above may not be used in a party's case-in-chief and may not be used during cross examination of the other side's case-in-chief (other than for impeachment). Defense witnesses are considered case-in-chief witnesses, not "rebuttal" witnesses. Objections to exhibits not raised pursuant to Paragraph IV.A.2 are waived.

C. Two (2) Chambers' copies of all of the aforementioned documents shall be hand-delivered to Chambers at the time of filing. The Joint Proposed Final Pretrial Order and Proposed Findings of Fact and Conclusions of Law shall be submitted via e-mail as attachments, in MSWord format, to JSCPO@cand.uscourts.gov. Hard copies must be provided as well. All hard-copy submissions should be three-hole punched.

1 D. At the Final Pretrial Conference, the above submissions shall be considered and, as
2 needed, argued.

3 PRETRIAL ARRANGEMENTS

4 A. Should a daily transcript and/or real-time reporting be desired, the parties shall
5 make arrangements with Rick Duvall, Supervisor of the Court Reporting Services, at
6 (415) 522-2079, at least ten (10) calendar days prior to the trial date.

7 B. During trial, counsel may wish to use overhead projectors, laser-disk/computer
8 graphics, poster blow-ups, models, or specimens of devices. Equipment should be shared by all
9 counsel to the maximum extent possible. The Court provides no equipment other than an easel.
10 The United States Marshal requires a court order to allow equipment into the courthouse. For
11 electronic equipment, parties should be prepared to maintain the equipment or have a technician
12 handy at all times. The parties shall tape extension cords to the carpet for safety. The parties may
13 work with the deputy clerk, Ada Means (415-522-2015), on all courtroom-layout issues.

14 SCHEDULING

15 A. Trial will be conducted from 8:30 a.m. to 2:30 p.m. (or slightly longer to finish a
16 witness) with one fifteen-minute break and one forty-five (45) minute lunch break, Monday
17 through Friday, excluding holidays.

18 OPENING STATEMENTS

19 A. If openings are permitted, each side will have a predetermined time limit for its
20 opening statement (usually no more than 45 minutes per side). Counsel should meet and confer to
21 exchange any visuals, graphics or exhibits to be used in the opening statements, allowing for time
22 to work out objections and any reasonable revisions.

23 WITNESSES

24 A. At the close of each trial day, all counsel shall exchange a list of witnesses for the
25 next two full court days and the exhibits that will be used during direct examination (other than for
26 impeachment of an adverse witness). Within 24 hours of such notice, all other counsel shall
27 provide any objections to such exhibits and shall provide a list of all exhibits to be used with the
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1 same witness on cross-examination (other than for impeachment). The first notice shall be
2 exchanged prior to the first day of trial. All such notice should be provided in writing.

3 B. The parties shall have all upcoming witnesses on the same day available in the
4 courthouse and ready to testify. Failure to have the next witness ready or to be prepared to
5 proceed with the evidence will usually be deemed to constitute resting. If counsel plans to read in
6 a transcript of a deposition, counsel must have a deposition prepared and vetted early on to read
7 into the record.

8 C. On the first day of trial, counsel shall bring the original and clean copies of any
9 deposition(s) intended to be used during the course of the trial. Any corrections must be readily
10 available. If counsel need to use the deposition during a witness examination, they shall provide
11 the Court with a copy with any corrections at the outset of the examination.

12 D. In lieu of direct testimony, the Court will consider receiving “prepared direct”
13 testimony in the form of declarations. When the witness is presented, the proponent must verbally
14 summarize the direct. Live cross-examination and redirect shall then occur. The parties may also
15 agree to submit the entire testimony of a witness via written testimony.

16 EXHIBITS

17 A. Prior to the final pretrial conference, counsel must meet and confer in person to
18 consider all exhibit numbers and objections and to eliminate duplicate exhibits and confusion over
19 the precise exhibit.

20 B. Use numbers only, not letters, for exhibits, preferably the same numbers as were
21 used in depositions. Blocks of numbers should be assigned to fit the need of the case (e.g.,
22 Plaintiff has 1 to 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.). A single
23 exhibit should be marked only once, just as it should have been marked only once in discovery
24 pursuant to this Court’s discovery guidelines). If the plaintiff has marked an exhibit, then the
25 defendant should not re-mark the exact document with another number. Different versions of the
26 same document, e.g., a copy with additional handwriting, must be treated as different exhibits with
27 different numbers. To avoid any party claiming “ownership” of an exhibit, all exhibits shall be
28 marked and referred to as “Trial Exhibit No. _____,” not as “Plaintiff’s Exhibit” or “Defendant’s
Exhibit.” If an exhibit number differs from that used in a deposition transcript, then the latter

transcript must be conformed to the new trial number, if and when the deposition testimony is used (so as to avoid confusion over exhibit numbers). There should be no competing versions of the same exhibit number; any discrepancies must be brought to the Court's attention promptly.

C. The exhibit tag shall be in the following form:

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| <p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA</p> <p>TRIAL EXHIBIT 100</p> <p>Case No. _____</p> <p>Date Entered _____</p> <p>By _____ Deputy Clerk</p> |
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Place the tag on or near the lower right-hand corner or, if a photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank. The parties must jointly prepare a single set of all trial exhibits that will be the official record set to be used with the witnesses and on appeal. Each exhibit must be tagged, three-hole-punched, separated with a label divider identifying the exhibit number, and placed in 3-ring binders. Spine labels should indicate the numbers of the exhibits that are in the binders. Each set of exhibit binders should be marked as "Original". Deposit the exhibits with the deputy clerk ten (10) days before the Pretrial Conference.

D. Counsel must consult with each other and with the deputy clerk at the end of each trial day and compare notes as to which exhibits are in evidence and any limitations thereon. If there are any differences, counsel should bring them promptly to the Court's attention.

1 E. In addition to the official record exhibits, three (3), joint sets of bench binders
2 containing a copy of the exhibits must be provided to the Court ten (10) days before the Pretrial
3 Conference, and should be marked as "Chambers Copies". Each exhibit must be separated with a
4 label divider identifying the exhibit number. (An exhibit tag is unnecessary for the bench set.)
5 Spine labels should indicate the numbers of the exhibits in the binders.

6 F. Before the closing arguments, counsel must confer with the deputy clerk to make
7 sure the exhibits in evidence are in good order. Counsel may, but are not required to, jointly
8 provide a revised list of all exhibits actually in evidence (and no others) stating the exhibit number
9 and a brief, non-argumentative description (e.g., letter from A. B. Case to D. E. Frank, dated
10 August 17, 1999).

11 TIME LIMITS

12 A. In certain cases, the Court will set fixed time limits at the final pretrial conference.
13 All of your examination time (whether direct, cross, re-direct or re-cross) for all witnesses and side
14 bar conference time must fit within your time limit and you may allocate it as you wish. Opening
15 and closing time limits shall be considered separately.

16 IT IS SO ORDERED.

17 Dated: December 16, 2021

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21 JACQUELINE SCOTT CORLEY
22 United States Magistrate Judge
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